(45)

HIGH COURT OF CHHATTISGARH AT BILASPUR
S.B. : HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
CIVIL REVISION NO. 175/2004

PETITIONER:
Landlord

Shri R. S. Shrivastava (Radhyesham Shrivastava), Advocate, aged 63 years, r/o. Jawahar Chowk, Durg. CG.

Vs.

RESPONDENT
Tenant.

Gurucharan, aged 50 years, s/o. Hukumsingh, Proprietor, Nirman Tailors, Jawahar Chowk, Durg. CG.

PRESENT

Mr. Pakaj Agrawal, Counsel for the petitioner.

Mr. P.P. Sahu, Counsel for the respondent.

O R D E R

(DATED 15/02/2006)

This revision filed under Section 23 E of the Chhattisgarh Accommodation Control Act (for short, "the Act") is directed against the order dated 08/09/2004 passed by the Rent Controlling Authority (for short, "the Authority") in Case No. 13-A/90/2002-2003, whereby application filed under Section 23-A of the Act for recovery of possession by the landlord has been dismissed.

2) Petitioner claiming to be landlord under Section 23-J of the Act, filed an application averring that the suit premises is

required by him for his bona fide non-residential purpose i.e., for doing the profession as an Advocate. Respondent opposed the same. Application was filed along with affidavit. The case was fixed for evidence on 23/06/2004, petitioner by filing affidavit adduced his evidence. On the same day he also filed an application for his cross examination and for recording the statements of other witnesses. The Authority closed the evidence of the petitioner and vide order dated 06/08/2004 dismissed the application filed by the petitioner for cross examination and recording the statements of his other witnesses. Respondent did not adduce any evidence and closed his case. Learned Authority on the ground that the witnesses have not been cross examined, therefore, the evidence tendered by the petitioner by affidavit cannot be accepted as evidence and therefore, learned Authority held that the petitioners failed to prove their bona fide requirement and dismissed the application.

3) Under Order 18 Rule 4 of the Code of Civil Procedure, procedure for recording the statement of witnesses has been described and according to that procedure, examination-in-chief of witness shall be on affidavit and his cross examination and re-examination has to be taken either by the Court or by the Commissioner appointed by it. Therefore, when the petitioner tendered examination-in-chief on affidavit and also filed an application for getting cross examination done, it was for the Authority to complete the evidence in accordance with procedure laid down under Order 18 Rule 4 of the C.P.C., instead doing so, learned Authority dismissed the application for cross examination

and recording statement of other witnesses. Here, it is not out of place to mention that the learned authority also did not take care to appreciate the provisions contained in Section 23-D (iii) of the Act.

4) Therefore, the impugned order as well as the order dated 06/08/2004 rejecting the application for cross examination of witnesses and for recording statement of other witnesses filed by the petitioner, passed by the Authority are set aside and the matter is remanded to the authority for deciding the matter afresh in the light of observations made by this Court and after affording proper opportunity of hearing to both the parties. Both the parties are directed to appear before the Authority on 08/03/2006.

Sd/-
V.K.Shrivastava
Judge

Raju